

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of License 5447A)
(Application 11523A) to add an)
unnamed spring in Placer County)
as a point of diversion.)
CARL and MARY WAHLBERG,)
Petitioners.)

ORDER : WR 79-3
SOURCE: Unnamed Spring
COUNTY: Placer County

ORDER DENYING PETITION TO ADD
POINT OF DIVERSION

BY THE BOARD:

Bill L. and Fay Disbrow having filed a petition to add a point of diversion under License 5447A; protests having been received; the petitioners and protestants having stipulated to proceedings in lieu of hearing as provided by Title 23, California Administrative Code, Section 737; an investigation having been made by the Board pursuant to said stipulation; Carl and Mary Wahlberg having succeeded Bill L. and Fay Disbrow as owners of License 5447A; the Board having considered all available information finds as follows:

Substance of Change Petition

1. License 5447 was held by original petitioners Disbrow and Rudolf K. and Patricia A. Sachau. The Sachaus are protestants in these proceedings. Because of frequent conflict between the parties over the joint use of the spring, protestants petitioned to move their point of diversion to a lower spring. The petition was

granted and separate licenses, Licenses 5447A and 5447B, were issued to the parties. License 5447A, which is owned by petitioner, is a license authorizing the direct diversion of 32,500 gallons per day (gpd) from an unnamed spring tributary to Peavine Creek for domestic and fire protection purposes with a limit of 10,780 gpd for domestic use. The season of diversion is year-round. The point of diversion is within the NE 1/4 of SW 1/4, Section 16, T16N, R12E, MDB&M, which is within the Tahoe National Forest. The place of use is within the SE 1/4 of SW 1/4, Section 16, T16N, R12E, MDB&M. Petitioner proposes to add a point of diversion at an unnamed spring located within the NW 1/4 of SE 1/4 of Section 16, T16N, R12N, MDB&M. The spring is located within the Tahoe National Forest. The existing point of diversion will not be abandoned. Petitioner represents that this change involves no change in source, both springs being tributary to Peavine Creek, and no increase in the amount of appropriation.

Project of Petitioner

2. Petitioner owns and operates a resort called the Flite Strip Resort, Inc., near Foresthill in Placer County. The resort consists of a residence for petitioner, a trailer park, campground, gas station, cafe, bar, and several cabins. The resort area is completely surrounded by the Tahoe National Forest.

Protests

3. Rudolf K. and Patricia A. Sachau own the other portion of License 5447, which is now License 5447B. That license authorizes

the direct diversion of 220 gpd for domestic purposes or 32,500 gpd total for domestic and fire protection purposes. The total amount diverted for combined domestic and fire protection uses under this license and License 5447A is limited to 32,500 gpd. Protestants have a permit from the U. S. Forest Service covering the development of the spring and the conveyance pipeline to the place of use. The point of diversion is the spring which petitioner requests be added to License 5447A as an additional point of diversion. Protestants allege that the unnamed spring from which they divert will not support the combined diversion of petitioner and protestant and that petitioner's spring provides sufficient water for his needs if petitioner would repair leaky pipes.*

Access to the Proposed Point of Diversion

4. On August 17, 1975, the Board requested the supervisor of the Tahoe National Forest to indicate whether the petitioner would be granted a special use permit for the proposed development. In a letter dated September 10, 1976, the Forest Supervisor stated that the U. S. Forest Service will not issue a special use permit for the water transmission line.

5. Section 748, Article 16, Subchapter 2, Chapter 3 of Title 23, California Administrative Code, states:

* Protestants have filed Application 25016 for a permit to appropriate unappropriated water from the existing point of diversion under License 5447B. Their claim, here, that there is insufficient water for protestant and petitioner is arguably inconsistent with their request for a permit under Application 25016. For reasons given *infra*, it is unnecessary to resolve this inconsistency in the present order.

"If the proposed project will require a permit, license, or approval from or by a federal or state agency or officer, and if it becomes evident that regardless of the action taken by the board, such permit, license, or approval could not be secured from the proper federal or state authority, the application will be rejected."

Although Section 748 specifically concerns only the approval of applications, the reason for the rule is equally applicable to change petitions. We therefore find that it is not in the public interest to approve an additional point of diversion under a license where it is evident that a licensee cannot obtain access thereto. Even if the access problem were resolved in petitioners' favor, the Board further concludes that it would not be in the public interest to grant the petition because the past conflicts between the parties caused the issuance of separate licenses. The Board knows of no reasons to reverse its previous findings that the solution to the conflict in the use of water is a separate license for each party and a separate point of diversion.

From the foregoing findings, the Board concludes that the petition to add a point of diversion under License 5447A should be denied.

The records, documents, and the data relied upon in determining the matter are: Applications 11523, 11523A, and 25016 and all relevant information on file therewith, particularly the report of a field investigation made on August 11, 1976; and topographic maps published by the United States Geologic Survey covering the area under consideration.

ORDER

IT IS HEREBY ORDERED that the petition to add a point of diversion under License 5447A is denied.

Dated: April 19, 1979

/s/ W. DON MAUGHAN
W. Don Maughan, Chairman

/s/ WILLIAM J. MILLER
William J. Miller, Member

/s/ L. L. MITCHELL
L. L. Mitchell, Member



STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

APPLICATION 11523A

PERMIT 6700

LICENSE 5447A

THIS IS TO CERTIFY, That

BILL L. DISBROW AND FAY DISBROW
BOX 606, FORESTHILL, CALIFORNIA 95631

HAVE made proof as of MAY 21, 1958 (the date of inspection)
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of
AN UNNAMED SPRING IN PLACER COUNTY

tributary to PEAVINE CREEK THENCE NORTH FORK OF MIDDLE FORK AMERICAN RIVER

for the purpose of DOMESTIC AND FIRE PROTECTION USES
under Permit 6700 of the Board and that the right to the use of this water has been perfected
in accordance with the laws of California, the Regulations of the Board and the permit terms; that the
priority of this right dates from AUGUST 21, 1946 and that the amount of water to which
this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated
purposes and shall not exceed TEN THOUSAND SEVEN HUNDRED EIGHTY (10,780) GALLONS PER
DAY FOR DOMESTIC PURPOSES OR THIRTY-TWO THOUSAND FIVE HUNDRED (32,500) GALLONS
PER DAY TOTAL FOR DOMESTIC AND FIRE PROTECTION PURPOSES FROM JANUARY 1 TO
DECEMBER 31 OF EACH YEAR, PROVIDED THAT NOTHING HEREIN CONTAINED SHALL BE CON-
STRUED AS CONFIRMING IN LICENSEE ANY RIGHT, WHICH SHALL BE GOOD AS AGAINST A
SUBSEQUENT APPROPRIATOR, TO AN AMOUNT FOR FIRE PROTECTION EXCEPT WHEN THERE
EXISTS AN ACTUAL NEED THEREOF FOR FIRE FIGHTING USE. TOTAL AMOUNT DIVERTED
FROM COMBINED DOMESTIC AND FIRE PROTECTION USES UNDER THIS LICENSE AND
LICENSE 5447B SHALL NOT EXCEED 32,500 GALLONS PER DAY.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

NORTH 575 FEET AND WEST 600 FEET FROM NE CORNER OF SE1/4 OF SW1/4 OF SECTION 16,
T14N, R12E, MDB&M, BEING WITHIN NE1/4 OF SW1/4 OF SAID SECTION 16.

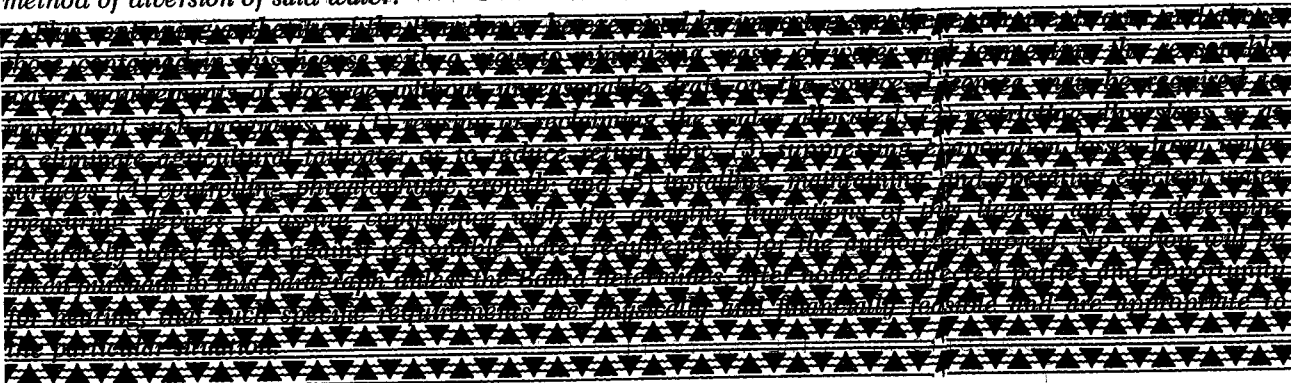
A DESCRIPTION OF LANDS OR THE PLACE WHERE
SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

WITHIN SE1/4 OF SW1/4 OF SECTION 16, T14N, R12E, MDB&M.

4-14-78 Asgo to Carl + Mary Wahlberg

Licensee shall allow representatives of the Board and other parties, as may be authorized from time to time by the Board, reasonable access to project works to determine compliance with the terms of this license.

All rights and privileges under this license, including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.



Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: MAY 1 1974

STATE WATER RESOURCES CONTROL BOARD

R. A. Rosenberger
Chief, Division of Water Rights